

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**DATE:** March 11, 2013

**LEONARD DAVIS**  
**Judge Presiding**

Court Reporters: Shea Sloan  
Judy Werlinger

Law Clerk: Gabrielle LaHatte

Court Administrator: Rosa L Ferguson

<b>VIRNETX INC.</b>  <b>V</b>  <b>CISCO SYSTEMS, INC.</b>	<b>CIVIL ACTION NO: 6:10-CV-417</b> <b>JURY TRIAL – DAY 5</b>
<b>ATTORNEYS FOR PLAINTIFF</b>	<b>ATTORNEYS FOR DEFENDANTS</b>
<b>SEE SIGN-IN SHEETS</b>	

On this day, came the parties by their attorneys and the following proceedings were had:

**OPEN:** 8:50 am

**ADJOURN:** 4:25 pm

<b>TIME:</b>	<b>MINUTES:</b>
8:50 am	<b>Hearing outside presence of jury.</b>
	Mr. Cassady addressed the court regarding Dft's <i>Daubert</i> on licenses and lower royalty base. Mr. Bonder responded. Mr. Cassady replied. Court inquired as to Defendant's response to Nash Bargaining. Mr. Bonder responded. Court inquired as to what Plaintiff would like the Court to do. Court will grant Daubert with regard to applying the royalty rate to the licenses – or if Cisco goes beyond the response to the Nash Bargaining Solution, the Court will grant relief to cross examine in regard to royalty base. Mr. Bonder asked for clarity as to the royalty base. Court stated it would come out in the cross.
	Mr. Curry addressed the Court and plaintiff has 2 objections to deposition designations of Henning Schulzrinne. Mr. Stadnick responded. <b>Court sustained objection.</b>
	Court asked for the Jury to be brought in. <b>Jury seated in the courtroom.</b>
	Court addressed the jury and welcomed them back.
	<b>Dr. PAUL CLARK</b> to the witness stand.
	Direct examination of Dr. Clark by Mr. Desmarais continued.
	Mr. Desmarais passed the witness. Mr. Desmarais offered <b>Dr. Clark's Slides 1-98, and</b>

TIME:	MINUTES:
	<b>Defendant's C2009-C2014 as Demonstrative Exhibits</b> and without objection exhibits admitted.
	Cross examination of Dr. Clark by Mr. Caldwell.
10:35 am	Court in recess.
10:50 am	Trial resumed. <b>Jury seated in the courtroom.</b>
	Cross examination of Dr. Clark by Mr. Caldwell continued.
	Mr. Caldwell passed the witness.
	Mr. Caldwell offered <b>Plaintiff's Exhibits referenced during Dr. Clark's testimony</b> , and without objection, exhibits admitted. Mr. Caldwell offered <b>Plaintiff's Demonstrative Exhibits used with Dr. Clark</b> , and without objection, demonstratives admitted.
	Redirect examination of Dr. Clark by Mr. Desmarais.
	Mr. Caldwell asked to approach the bench. Bench Conference held.
	Redirect examination of Dr. Clark continued.
	Mr. Desmarais passed the witness.
	Mr. Caldwell asked to approach the bench. Bench Conference held.
	Redirect examination of Dr. Clark continued.
	Mr. Desmarais passed the witness. Recross examination of Dr. Clark by Mr. Caldwell.
	Mr. Caldwell passed the witness. Redirect examination of Dr. Clark by Mr. Desmarais.
	Mr. Desmarais passed the witness.
	Court asked for Jury to pass questions down for this witness. Court asked counsel to approach. Bench Conference held.
	Court asked the witness one question from the Jury.
	Mr. Desmarais had some follow-up questions.
	Nothing further from parties.
12:20 pm	Court in recess until 1:00 pm
	Court addressed the Mr. Caldwell and asked that he get the Exhibit numbers to the Clerk.
	Court gave VirnetX and Cisco their times: Plaintiff - 11:53 and Defendant - 8:33
12:20 pm	Court in recess until 1:00 pm
1:00 pm	Trial resumed. <b>Jury not present in the courtroom.</b>
	Mr. Curry curative instruction of VPN regarding anonymity. Mr. Curry read a proposed instruction.
	Mr. Desmarais responded.
	Court asked for Mr. Curry to tender proposed instruction.
1:12 pm	<b>Court in recess to look at proposed instruction.</b>
1:35 pm	Trial resumed. <b>Jury not present.</b>  Court read the instruction to the parties the Court will be giving to the Jury. Court inquired as to objections. Mr. Curry does not have an objection. Mr. Desmarais listed several objections. Mr. Curry responded to Mr. Desmarais objections. Court overruled the objections.  Court asked for the Jury.
	<b>Jury seated in the courtroom.</b>

TIME:	MINUTES:
	Court read an instruction to the Jury regarding VPN.
	Mr. Bondor called <b>DAN LANG</b> to the witness stand. Witness sworn.
	Direct examination of Mr. Lang by Mr. Bondor.
	Mr. Cawley asked to approach. Bench Conference held.
	Mr. Bondor offered Slides as <b>Defendant's Demonstratives 2015 – 2025</b> , and without objection, exhibits admitted. Mr. Bondor passed the witness.
	Cross examination of Mr. Lang by Mr. Cawley. Mr. Cawley offered <b>Plaintiff's Exhibit 786</b> , and without objection, exhibit admitted.
	Mr. Cawley passed the witness. Redirect examination of Mr. Lang by Mr. Bondor.
	Mr. Bondor passed the witness.
	Court asked for Jury to pass questions down. No questions from the Jury.
	Mr. Stadnick called <b>Dr. PETER ALEXANDER</b> to the witness stand. Witness previously sworn.
	Direct examination of Dr. Alexander by Mr. Stadnick.
	Mr. Caldwell asked to approach bench. Bench Conference held.
	Direct examination of Dr. Alexander continued.
3:17 pm	Court in recess until 3:30
3:30 pm	Trial resumed. <b>Jury seated in the courtroom.</b>
	Court addressed the Jury and may be going past 4:00 pm.
	Direct examination of Dr. Alexander by Mr. Stadnick continued.
	Mr. Caldwell asked to approach bench. Bench conference held.
	Direct examination of Dr. Alexander continued.
	Mr. Stadnick asked to approach. Bench Conference held.
	Direct examination of Dr. Alexander continued.
	Mr. Caldwell asked to approach bench. Bench Conference held.
	Direct examination of Dr. Alexander continued.
4:05 pm	Court addressed the Jury and will recess them for the day. Jury excused from the courtroom.
	<b>Jury not present in the courtroom.</b>
	Court addressed the parties and asked counsel to make his presentation.
	Mr. Stadnick addressed the Court regarding Alexander's Expert Report. Court asked for Mr. Stadnick to lay predicate and will allow plaintiff to cross.
	Direct examination of Dr. Alexander by Mr. Stadnick.
	Cross examination of Dr. Alexander by Mr. Caldwell.
	Court inquired as to documents being identical. Court will take a look at the documents.
	Mr. Cassidy addressed the Court on witnesses. Court asked parties to identify the will-call witnesses. Mr. Desmarais responded. Court asked them to notify by 7:00 pm tonight.
	Mr. Cassidy asked for the Court for the times: Court advised that plaintiff has used 12:02 and defendant has used 10:26.
4:25 pm	There being nothing further, Court adjourned for the day.